



SPOTLIGHT ON KEY PUBLICATIONS: RIGHT TO CONSULTATION IN LATIN AMERICA



Since the 1990s, and amidst a rise in large-scale development projects in Latin America, the right to consultation has emerged as a collective right used to defend indigenous and tribal peoples' rights to the full use and enjoyment of their land, territory and natural resources. A common feature of Latin American experiences of consultation rights has been the key role played by legal and institutional frameworks, and in particular, the use of existing court systems.

Drawing on case study material from across the region, the following publications present and analyse progress made at the regional and national levels, on-going challenges and key lessons learned. They also describe some paradigmatic cases and highlight the role played by regional institutions such as the Inter-American Human Rights System.

To learn more about how indigenous and tribal peoples in Latin America have been successful in enforcing their consultation rights by bringing emblematic cases before their national and regional human rights courts, see the [ELLA Brief: Defending Latin America's Indigenous and Tribal Peoples' Rights Through Laws and the Courts](#).¹

► [Application of Convention No. 169 by Domestic and International Courts in Latin America: A Casebook](#)

Since the enforcement of ILO Convention 169 remains a considerable challenge in many Latin American countries, this publication aims to illustrate successful examples of regional and national courts making use of the Convention to protect indigenous and tribal peoples' rights. Given that the right to consultation is a key component of the Convention, this publication also presents cases on the right to consultation that were brought before the Inter-American Court of Human Rights and various national courts in countries such as Argentina, Bolivia, Colombia, Costa Rica and Ecuador. Practitioners, judges, indigenous and human rights lawyers and communities affected by development projects in other regions will benefit from reviewing the lessons drawn from Latin American experiences since each example demonstrates how the judge assessed the case and how the ILO Convention 169 was applied.

Full citation: International Labour Organization. 2009. *Application of Convention No. 169 by Domestic and International Courts in Latin America: A Casebook*. International Labour Organization, Geneva.

¹ Though not focused only on indigenous peoples, the ELLA Programme has also conducted research on consultation in the context of the extractive industries. To learn more, see the [ELLA Brief: Managing Conflict through Consultation: Latin America's Experience](#).



► [Case of The Saramaka People Versus Suriname](#)

In 2008, the Inter-American Court of Human Rights made an interpretative ruling on a previous sentence it had made on the case of the Saramaka Peoples versus the Government of Suriname. The ruling is paradigmatic for the Latin American region because it highlights some important elements regarding the right to free, prior and informed consultation. Among these are indigenous peoples' right to effective control over their traditional land, the responsibility of the state to obtain indigenous peoples' free, prior and informed consent before the development of any activity on their land, the importance of carrying out environmental and social impact assessments of all development projects proposed to be carried out on indigenous peoples' lands and territories. Finally, this court ruling provides guidance on how the right to free, prior and informed consultation should be respected and enforced. Given the relevance of this ruling for Latin America, this document is an essential read for anyone working on the same issues in other regions.

Full citation: Inter-American Court of Human Rights. 2007. *Case of the Saramaka People Versus Suriname*. Inter-American Court of Human Rights, San José.

► [Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169](#)

Produced by the International Labour Organization, this Guide aims to provide recommendations and ideas for implementing ILO Convention 169 to countries that have ratified it. In particular, Chapter V "Participation, Consultation and Consent" presents various examples from Latin America, including Bolivia, Colombia, Guatemala, Mexico, Panama and the Andean Community, to illustrate how countries can establish and implement mechanisms for consultation and encourage the participation of indigenous and tribal peoples in decisions that may affect their livelihoods. These country case studies are useful for readers from other regions given that the enforcement and protection of the right to consultation and participation of indigenous and tribal peoples remains a challenge in almost all regions of the world.

Full citation: Feiring, B. 2009. *Indigenous and Tribal Peoples' Rights in Practice: A Guide to ILO Convention No. 169*. International Labour Organization, Geneva.

► [Indigenous and Tribal People's Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System](#)

The Inter-American Human Rights System (IAHRS) and its different agencies have played a major role in protecting and enforcing indigenous and tribal peoples' rights to their lands and territories in Latin America. By making progressive rulings on cases brought before it, the IAHRS has developed extensive norms and jurisprudence – including on issues related to prior consultation – that define state obligations to protect indigenous and tribal peoples' rights to their lands and territories. This publication presents a summary of decisions made by the IAHRS on many cases based on regional and international human rights law. It also highlights on-going challenges and best practices for protecting these rights with the aim of supporting the safeguarding of these rights in other regions.

Full citation: Inter-American Commission on Human Rights. 2010. *Indigenous and Tribal People's Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. Organization of American States, Washington, DC.



► [Prior Consultation: A Fundamental Right for Indigenous Peoples](#)

This publication contains 11 articles written by regional and national experts in Latin America and provides a useful overview of the situation of the right to free, prior and informed consultation in the region. Two of the articles describe the regional situation with regard to consultation rights, while the rest are country case studies from Argentina, Bolivia, Chile, Colombia, Ecuador, Guatemala, Mexico and Peru. Each of the case studies provides information on country context, progress made to date to protect the prior consultation right in law and through court rulings, and the implementation of consultation mechanisms. The articles also describe the on-going challenges faced by each country and the region in enforcing this right by providing examples of specific conflicts. Readers from other regions will most likely benefit from understanding how different contextual factors can affect the practical implications of applying and safeguarding the right to prior consultation.

Full citation: Latin American Press. 2011. *Prior Consultation: A Fundamental Right for Indigenous Peoples*. Latin American Press, Lima.

► [The Rights of Indigenous Peoples to Prior Consultation: The Situation in Bolivia, Colombia, Ecuador and Peru](#)

Against a backdrop of increasing social conflicts in Latin America resulting from large-scale development projects, this publication by Oxfam and the Due Process Law Foundation presents various legal mechanisms and tools being used to protect the right to prior consultation for indigenous and tribal peoples in Latin America. It provides an analysis of the current situation in relation to the right to prior consultation in four Latin American countries - Bolivia, Colombia, Ecuador and Peru - and identifies barriers to enforcement and respect of this right. It also includes recommendations for overcoming obstacles and challenges. The publication will be useful for policymakers and practitioners working on the right to prior consultation with indigenous and tribal populations in other regions.

Full citation: Due Process of Law Foundation, OXFAM. 2001. *The Rights of Indigenous Peoples to Prior Consultation: The Situation in Bolivia, Colombia, Ecuador and Peru*. Due Process of Law Foundation, OXFAM, Washington, DC.

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To learn more about efforts to promote indigenous and ethnic minority rights in Latin America, read the [ELLA Guide](#), which has a full list of the knowledge materials on this theme. To learn more about other ELLA development issues, browse other [ELLA Themes](#).

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